

ATTORNEY DOCKET NO.  
020431.0662

10-21-02

2166

APPLICATION NO.  
09/510,607  
*Amat*  
*# 17/00 + Reconsider:*  
*S. Lewis*  
*10/30/02*



1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Brian M. Kennedy

Serial No.:

09/510,607

Filing Date:

February 22, 2000

Group Art Unit:

2166

Examiner:

Alexander Kalinowski

Title:

*System and Method for Managing ATP*

RECEIVED  
OCT 23 2002  
GROUP 3600

Assistant Commissioner for Patents  
Washington, D.C. 20231

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 C.F.R. § 1.10 on the date indicated below and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

*Willie Jiles*  
Willie Jiles

Date: October 17, 2002

Express Mail No. EL 953698209 US

Dear Sir:

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

Applicant received a Notice of Non-Compliant Amendment mailed September 7, 2002, stating that Applicant's Response filed August 23, 2002, is considered non-compliant because it does not meet the requirements of 37 C.F.R. § 1.121. Specifically, the Notice states that a marked-up version of amended claims is required by 37 C.F.R. § 1.121(c)(1)(ii). Copies of the Notice and Applicant's Response are attached.

Applicant respectfully submits that, because Applicant's Response contained no amendments to any claims, a marked-up version of amended claims was not required. The provisions of 37 C.F.R. § 121(c)(1)(ii) apply only "if a claim is amended," which is not the case with respect to Applicant's Response. Applicant therefore respectfully submits that the

Notice is in error and requests the Examiner to reconsider the rejection of the claims in view of Applicant's Response.

**Conclusion**

Because Applicant submits that the Notice is in error, Applicant believes that no fee is due for responding to the Notice of Non-Compliant Amendment. Nonetheless, the Commissioner is hereby authorized to charge any fees and credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicant



Christopher W. Kennerly  
Reg. No. 40,675

Date: October 17, 2002

**Correspondence Address:**  
Baker Botts L.L.P.  
2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
Tel. 214.953.6812



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/510,607      | 02/22/2000  | Brian M. Kennedy     | 020431.0662         | 2320             |

**DOCKETED**

7590 09/07/2002  
Christopher W Kennerly Esq  
Baker Botts LLP  
2001 Ross Ave  
Dallas, TX 75201-2980

*Response due:  
October 7, 2002*

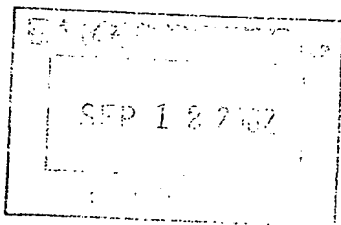
*No extensions available CAD 10/7*

|                         |              |
|-------------------------|--------------|
| EXAMINER                |              |
| KALINOWSKI, ALEXANDER G |              |
| ART UNIT                | PAPER NUMBER |

3626

DATE MAILED: 09/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



Docket \_\_\_\_\_ ✓ Wrapper \_\_\_\_\_ ✓  
RVF Docketed \_\_\_\_\_ N/A \_\_\_\_\_  
Reference(s) \_\_\_\_\_



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELL  
DIRECTOR OF THE UNITED STATES PATENT /  
W

Paper No

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment filed on Aug. 23 02 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on September 8, 2000 (see 65 Fed. Reg. 54603, Sept. 8, 2000, and Sept. 19, 2000). In order for the amendment to be compliant, applicant must supply the following omissions in response to this notice.

THE FOLLOWING ITEMS ARE REQUIRED FOR COMPLIANCE WITH RULE 1.121 (APPLICANT NEED SUBMIT THE ENTIRE AMENDMENT):

- ☐ 1. A clean version of the replacement paragraph(s)/section(s) is required. See 37 CFR 1.121(b)(1)(ii).
- ☐ 2. A marked-up version of the replacement paragraph(s)/section(s) is required. See 37 CFR 1.121(b)(1)(iii).
- ☐ 3. A clean version of the amended claim(s) is required. See 37 CFR 1.121(c)(1)(i).
- ☒ 4. A marked-up version of the amended claim(s) is required. See 37 CFR 1.121(c)(1)(ii).

Explanation: \_\_\_\_\_

(LIE: Please provide specific details for correction to assist the applicant. For example, "the clean version of claim 6 is missing.")

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO <http://www.uspto.gov/web/offices/dcom/olia/pbg/sampleaf.pdf>. A condensed version of a sample amendment format is attached.

☐ **PRELIMINARY AMENDMENT:** Unless applicant supplies the omission or correction to the amendment in compliance with revised 37 CFR 1.121 noted above within ONE MONTH of the mailing of this notice, examination on the merits may commence without entry of the originally proposed preliminary amendment. This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.

☒ **AMENDMENT AFTER NON-FINAL ACTION:** Since the above-mentioned reply appears to be compliant, applicant is given a TIME PERIOD of ONE MONTH or THIRTY DAYS from the mailing of this notice, within which to supply the omission or correction noted above in order to avoid a final action. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

[Signature]  
Legal Instruments Examiner (LIE)

# Changes to the Patent Rules

October 20, 2000

Volume 1, Issue 3

This is the third in a series of Patent News Bulletins to assist you in keeping up to date with significant rule changes which affect you. Keep this copy to use as a bookmark for your present MPEP, or view this bulletin again on the USPTO Website.



## Simplified Amendment Practice.

Replacement paragraphs/sections/claims to be used. 37 CFR 1.12

The rule package "Changes to the Patent Business Goals - Final Rule," published in the Federal Register on September 8, 2000, 65 Fed. Reg. 54603 (Sept. 8, 2000), and the Official Gazette on September 19, 2000, 1238 Off. Gaz. Pat. Office 77 (September 19, 2000). The PBG rule package makes a number of revisions to Title 37.

The entire final rule may be found at the USPTO Website at <http://www.uspto.gov/web/offices/oa/pb/pbg/index.html>.

Areas and individuals primarily affected by this rule change include:  
(1) Patent Examiners and Tech Support Staff in the Technology Centers  
(2) Office of Patent Publication

Any questions related to this change in practice should be directed to Joe Naravage, Special Projects Exr., (703-305-1795) or Ltz. Dougherty, Legal Advisor, (703-306-3156) OPLA.



Mandatory compliance with the revised rule is not required until March 1, 2001. It is suggested that applicants adopt the revised procedures on or after November 7, 2000, in order to adjust to the changes in amendment practice.

Under the new amendment practice, amendments to the specification must be made by the submission of clean new or replacement paragraph(s), section(s), specification, or claim(s). This practice will provide a specification (including claims) in clean, or substantially clean, form that can be effectively captured and converted by optical character recognition (OCR) scanning during the patent printing process.

The new practice requires applicant to provide, in addition to the clean version of a replacement paragraph/section/claim, a marked-up version using applicant's choice of a conventional marking system to indicate the changes, which will aid the examiner in identifying the changes that have been made. The marked-up version must be based on the previous version and indicate (by markings) how the previous version has been modified to produce the clean version submitted in the current amendment. The term "previous version" means the version of record in the application as originally filed or from a previously entered amendment.

The following format is suggested in an amendment paper: (1) a clean version of each replacement paragraph/section/claim with clear instructions for entry; (2) starting on a separate page, any remarks/arguments (37 CFR 1.111); and (3) starting on a separate page, a marked-up

version entitled "Version with marking show changes made."

Applicants will also be able to submit a set of all pending claims, consolidating a previous versions of pending claims from series of separate amendments into a single clean version in a single amendment paper. This submission of a clean version of all the pending claims will be construed as correcting the cancellation of all previous versions of any pending claims. No marked version will be required to accompany the clean version where no changes other than consolidation are being made.

*Amendment by  
paragraph/claim  
replacement in clean form.*

The amended rule encourages issuance of applications with examiner's amendment with practitioners/applicants have file a formal amendment. Additions or deletions of subject matter in the specification, including the claims, may continue to

made in an examiner's amendment at the time of allowance by instructions to make a change at a precise location in the specification or the claims. An examiner's amendment may incorporate a printed copy of a fax mail amendment submitted by applicant. Only that part of the e-mail or fax directed to a clean version, or a portion of, a paragraph/claim to be added should be printed and attached to the examiner's amendment, a paper copy of the entire e-mail or fax be entered in the file. The electronic version of the e-mail is not required to be saved as a printed e-mail (and any attachments) to part of the application file record.

MPEP 714+ & 1302.04

ATTORNEY DOCKET NO.  
020431.0662



APPLICATION NO.  
09/510,607

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Brian M. Kennedy  
Serial No.: 09/510,607  
Filing Date: February 22, 2000  
Group Art Unit: 2166  
Examiner: Alexander Kalinowski  
Title: *Managing Data Associated with Available-to-Promise (ATP) Products*

RECEIVED  
OCT 23 2002  
GROUP 3600

**Box AF**

Honorable Assistant Commissioner  
for Patents

P. O. Box 2327  
Arlington, VA 22202

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|---|
| <p align="center"><b>CERTIFICATE OF MAILING<br/>BY EXPRESS MAIL</b></p> <p>I hereby certify that this communication is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.</p> <p><i>Willie Jiles</i></p> <p>Willie Jiles<br/>Date: August 23, 2002<br/>Exp. Mail Receipt No. EL 953697340 US</p> |
|---|

Dear Sir:

EL 953697340US

**RESPONSE PURSUANT TO 37 C.F.R. § 1.111**

In response to the Office Action mailed March 28, 2002, Applicant respectfully requests the Examiner to reconsider the rejection of the claims in view of the following remarks.